



ZONING BOARD OF APPEALS

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WALTER B. ADAMS
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RICHARD L. SEEDEL

July 1, 2021

7:30 pm

Public Hearing, Juliani Meeting Room, Town Hall

Zoning Board of Appeals Members Present:

- J. Randolph Becker
- Robert W. Levy
- David G. Sheffield
- Richard L. Seegel
- Walter B. Adams
- Derek B. Redgate

BUSINESS MEETING

ZBA 2018-18, DAVID COLETTA, 39 ATWOOD STREET

Mr. Becker said that the request before the Board is for a determination of whether a change to a previously approved project is a minor modification. He said that the request is for a change to the garage that was permitted as a second floor, including a bump out on each end and another bump out that has a garden window. He said that the Proponent told the Board when he came in for his special permit that the upper floor of the garage was used for storage. He questioned why storage use would need two bump outs and a garden window.

Mr. Becker said that the Board received an email today in which the Proponent asked for a further change that relates to the house and the garage.

Mr. Becker said that his opinion is that this is not a minor change. He said that a public hearing should be opened for all of the proposed changes at one time.

Mr. Adams agreed. He said that any one of the changes would constitute a significant change that needs to be reviewed in a public hearing setting. – why necessary for a storage room – not minor change

Mr. Levy moved, Mr. Adams seconded the motion, and the Board voted unanimously to find that the proposed changes are not a minor modification and do require a public hearing for approval.

PUBLIC HEARING

Mr. Becker said that the Board has been getting a lot of documents late. He said that the Board got many documents today for cases on the docket for tonight. He said that it is not fair to the Board to have documents come in that late and it is not right for the Board to 35 days to review the things that are

submitted and then try to catch up in the last two hours to figure out what is with this project that is causing so many late changes. He said that the Board will be changing its rules so that the documents that are submitted by the proponent by the deadline date will be the documents that the Board will use to make its decision. He said that the Board will make some rules about comments from the public in between, up until the public comments during the hearings.

Mr. Becker discussed the order of the agenda.

ZBA 2021-42, GERALDINE JARVIS, 26 HARRIS AVENUE

Present on behalf of the petition was David Himmelberger, Esq.

Mr. Levy said that he saw correspondence from Mr. Himmelberger about his initial request to continue the petition. He asked if Ms. Jarvis was present at the hearing. Mr. Himmelberger said that Ms. Jarvis was not able to attend but he is mindful of the neighbors' concerns and is prepared to go forward, if the Board desires.

Mr. Levy said that if an Applicant cannot attend a hearing due to a medical condition, he is inclined to consider continuation. He said that, given Mr. Himmelberger's letter, the Board gives credit to what everyone who appears before the Board says and unless the Board is proven wrong, it does not question their veracity. Mr. Himmelberger said that he did not appreciate members of the public taking a different view. He said that he felt that it was important to lay it out on the record.

Mr. Levy said that the Board received additional submittals today, including a 50 page document which none of the panel members have had an opportunity to review. He said that, as a result of that, the Board will not consider it tonight. He said that it is a volunteer board and the members are not able to drop everything to review a new submittal for a hearing that night. He said that the Board generally require that materials be submitted in advance so that the Board can review them. He said that if there is material that people want the Board to review, they will do it but not on such short notice.

Mr. Levy said that tonight's hearing is a continuation. He said that it was left at the previous hearing that the Applicant would have a meeting with the neighbors to work out conditions or compromises that people could live with.

Mr. Himmelberger said that he represents Jeri Jarvis in connection with her request to renew a special permit for a home occupation. He said that, pursuant to the Board's suggestion at the last meeting, he reached out to the neighbors and sent a letter out and invited all interested parties to meet at Ms. Jarvis' home on Saturday, June 12, 2021 at 1 pm. He said that he got a call from Ms. Jarvis at 10:30 am on June 12th, saying that she was not feeling well. He said that an ambulance took Ms. Jarvis to the hospital. He said that he appeared at the meeting where there were 10 to 15 neighbors. He said that he asked the neighbors to sign in and all but three declined. He said that he listened to the neighbors' complaints and concerns and took on a number of suggestions for additional conditions to the special permit. He said that he included them in his last letter to the Board. He said that the additional conditions included a restriction and enforcement of no pick up and drop off before 7 am or after 7 pm. He said that the special permit had been silent on that but it is a reasonable request. He said that Ms. Jarvis indicated at the previous hearing that she would allow medical personnel to drop off as early as 6 am. He said that Ms. Jarvis has agreed to restrict the pick up and drop off hours between the hours of 7 am to 7 pm. Mr. Levy said that the current decision limits the number of dogs to 15 between 7 am to 7 pm. He asked if the proposed restriction is different. Mr. Himmelberger said that dogs that were left overnight may have been picked up outside of those hours, as were the dogs that were dropped off at 6 am. He said that it was reasonable to add the new condition, with no traffic between 7 pm and 7 am.

Mr. Himmelberger has directed all of the traffic to drive less than 10 miles per hour. He said that cars will be required to pull into the driveway for drop off and pick up, no dogs will be allowed out of the cars unleashed. He said that his client has decided that it is time to draw the business to a close. He suggested a condition that limits the special permit to one year to allow for transition out of the doggy daycare business.

Mr. Himmelberger said that he could not reconcile the disparate reporting. He said that there are neighbors who have written in support who say that they see no issues and there are a number of neighbors who have voiced complaints.

Mr. Himmelberger asked that the Board grant a one year extension of the special permit, subject to additional conditions.

Mr. Himmelberger said that he explained in his letter that during the past year, his client suffered from Covid and took care of her mother prior to her passing. He said that she relied on an individual who has since been terminated, who may not have been handling this in a way that it should have been handled. He said that, going forward, the commitment is to abide by the terms of the special permit with the additional conditions.

Mr. Levy asked if it is possible to have staggered drop off and pick ups. He said that this is a residential area that is not heavily traveled on. Mr. Himmelberger said that they can do that but it may be already be happening. He said that his experience at drop off is that there was one or two cars there. He said that it is not unreasonable to request the staggering, Mr. Levy questioned whether two cars parking in the driveway will cause queuing in the street. He discussed establishing drop off times with the clients.

Mr. Levy asked if Mr. Himmelberger would object to a condition that the special permit would not be renewable after one year. He said that there is a line between a home occupation and business conducted at someone's home, such as a psychiatrist having one person at a time in their home.

Mr. Levy asked if any member of the public wished to speak to the petition. He said that the Board takes comments from the public seriously. He said that the Board was somewhat surprised by this because the special permit has been renewed several times since 2004 and there were never had objections until now. He asked if this is a result of something changing in the operation of the business or with more people being home with Covid. Mr. Himmelberger said that during the last year, Ms. Jarvis was not able to be on top of it as she would have wanted to be. He said that she relied on an individual who has been terminated. He said that she currently has one or two employees who come in to help out.

Hyii Bae, 29 Harris Avenue, read a letter that discussed dogs barking and parking cars that has been very stressful for himself and his wife. He said that the Board asked for neighbors' input at the previous hearing. He said that the Baes and other Asian families were accused of lying and bullying but they spoke the truth.

Mr. Becker asked Mr. Bae to focus on the Zoning Bylaw and the things that the Board needs to hear in order to make the decision that it is charged with making.

Mr. Bae said that they feel like third class citizens and that their word does not count. He said that it has been hurtful and stressful but they think that it is important to speak out. He said that they do not want hurt Ms. Jarvis but it is not right. He said that they have supported Ms. Jarvis for a long period of time but now is the time to speak up. He said that for everyone who supports Ms. Jarvis, the Baes think that they do not understand what they are going through and asks them to put themselves in their shoes. He said that his son-in law, Dr. Kim, and their daughter will be speaking. He thanked the Board for hearing their side of the story.

Glen Kim, 53 Emerson Road, said that Ms. Jarvis has mislead the town and the Zoning Board of Appeals. He said that 15 dogs is the limit during the day. He said that she has exceeded that with up to 50 dogs. He

said that the count on the Animal Inspector Report from former Animal Officer Sue Webb was 62 and was signed off by Ms. Jarvis. He said that so far exceeds the limit of 15. He asked that the Board terminate the permit and not consider it for renewal.

Yu Yu Ong, 20 Harris Avenue, said that she looked at the website last Sunday and the posted timeframe was 6 am to 7:30 pm. She said that is now changed. She said that she has a camera and husband counted the cars. She said that there are only six houses in between her and Ms. Jarvis'. She said that her husband counted 16 cars from 6:55 am to 8:55 am this morning. She said that there is traffic with so many cars passing through.

Julie Bae, 29 Harris Avenue, said that she and her parents are very compassionate with Ms. Jarvis' situation but the magnitude of the business is out of control. She said that if you Google Absolutely Pawsitive, you will see many reviews because her client base is enormous. She said that this is not suitable for a residential area. She asked the Board to consider the impact of 50, 30 or even 10 dogs for 24 hours a day, seven days a week. She said that they do not want Ms. Jarvis to shut down her business but there are other options. She said that it is not suitable for the residential street and would better if it was moved to a commercial location.

Mr. Seegel asked if the increase in the dogs and traffic has been over the past 18 months. Ms. Bae said that she does not live at her parents' house but with Covid it has become more evident because people are home more. She said that the business has grown exponentially over the years and the permit was renewed. She said that they did not receive notice of the hearings, which is why there was never anything on record. Mr. Levy said that all abutters and abutters to abutters within 300 feet are sent notice from the Board. Mr. Seegel said that all of the Board's hearings are noticed in the Wellesley Townsman twice before the hearing. Ms. Bae said that they did not receive anything until the last hearing and that is why they have not been to the hearings before. .

Yetwah Chow, 16 Harris Avenue, said that based on the previous hearing and what she heard tonight, there are three major points that are of utmost importance. She said that there is a violation of the protocol of the special permit. She said that there is noncompliance based on the number of dogs and cars vehicles traveling down their street. She said that evidence from the former Animal Control Officers states that. She said that the excessive amount of dogs and cars do not meet the conditions of the special permit.

Ms. Chow said a second issue is idling as clients go in and out of the business. She said that violates the State law and there are environmental impacts.

Ms. Chow said that a third issue is public safety. She said that she and her son are working from home and they see a lot of vehicles come down the road at high speed. She said that her son was almost hit. She said that the dynamics of their street is no longer safe haven, as it has become more of a commercial district that the neighbors have to contend with. She said that the entire street has to deal with one person holding a business. She said that the public safety issue is of utmost concern. She thanked the Board for the opportunity to speak and asked that the Board consider the three major points that she discussed.

The Board discussed Anti-Idling laws.

Jane Bae, 53 Emerson Road, said that the nature of the home occupation is that it is basically an exterior dog park that is in the neighborhood. She said that a lot of dogs are kept outside during the daytime. She said that while it is a lovely facility for the dogs that they commend Ms. Jarvis for, there is a fair amount of noise pollution and some things get lost in translation in terms of how the site is set up and how it differs from a traditional home occupation such as a psychiatrist or an accountant having an office. She said that the nature of the business is an important consideration in a residential district. She said that noise pollution is also a health and stress issue.

Mr. Becker read the Planning Board recommendation.

Mr. Levy asked if there has been any noticeable change in the number of dogs since the last hearing. Mr. Himmelberger said that it was reported to him at the neighborhood meeting that there had been a marked improvement. He said that there was a concern that the improvement was the product of the Board's focus on the renewal. He said that, as part of every renewal, there has been a provision for reporting by the Animal Control Officer. He said that he was unable to reconcile the suggestion that she found 62 dogs present.

Mr. Levy discussed home occupation versus business. He said that the ZBA is not an enforcing board. He asked Michael Grant, Zoning Enforcement Officer, if any complaints had been filed with him. Mr. Grant said that he had not received any formal written complaints about 26 Harris Avenue.

Mr. Levy discussed concerns that some liberties may have been taken over the years from conditions in past permits and concerns about restrictions being followed. He said that the neighbors now know who to call. Mr. Grant said that he has the ability to fine violations but his first approach is typically to try to bring the violations into compliance. He said that if fining does not work, he has the ability to seek legal action in a court of law to gain compliance. Mr. Adams asked if one of Mr. Grant's procedures would be to conduct an inspection of property and take a count of the dogs to get a sense of the level of noise. Mr. Grant said that his department would make an inspection of the property if they received a formal complaint.

Mr. Seegel said that Ms. Jarvis' business has grown and the neighborhood has grown. He said that the Board needs to spell out more specifically what the conditions will be if renewal of the special permit is approved. He said that Ms. Jarvis indicated that she plans to retire within the next year. He said that he understands what the neighbors are saying. He said that he understands from prior letters that some people do not have a problem with it. He said that it is up to the Board to attempt to render a decision that contains sufficient conditions that everybody's interests will be protected.

Mr. Levy said that the ZBA is governed by seven factors that have to be considered under the bylaw, the most significant one being that the business cannot disturb the customary character of a residential neighborhood.

Mr. Seegel said that, in addition to calling the Building Inspector, if there is a continuation of people speeding on the street, neighbors should call the police department. He said that the presence of a police cruiser may help prevent speeding and idling.

Mr. Redgate said that it is difficult for the Board to arbitrate neighborhood disagreements. He said that he is very sympathetic with the neighbors, especially if this was a three year renewal. He said that he also sympathizes with someone who has a home occupation who is offering a sunset clause of one year. He said that if a permit for this came in next year for renewal or as a new permit, the Board would probably really sympathize with the neighbors.

Mr. Levy said that renewing the special permit for one year will allow Ms. Jarvis to close down the business in an orderly manner. He said that what he heard from the public is that if all of the conditions were followed, there would not be as much objection. He said that members of the public now have a better idea of what to do if there are violations. He said that the Board admonishes Ms. Jarvis, though Mr. Himmelberger, that the conditions have to be followed. He said that liberties that were taken in the past cannot go forward.

The Board discussed moving forward on the petition. Mr. Levy said that some materials were submitted too late for the Board to review. He said that the hearing would have to be continued if the Board was to consider them.

Mr. Kim said that according to Massachusetts Law, RE 16 RC 13, it is mandated that Zoning protects the public health. He said that there is a whole body of literature about noise pollution and detrimental effects on health. He said that the Baes report that this is causing them a lot of anxiety, which is a public health issue. He said that by continuing this, the Board is sanctioning a health hazard. Mr. Becker said that the Board does not have any evidence that there is a medical issue.

Mr. Seegel said that, like most statutes in Massachusetts and federal law, the introductory paragraphs give the general purpose of the law and why they are passing it. He said that the introductory paragraph is not part of the statute itself that is interpreted and enforced. He said that the bylaw has similar language to what Mr. Kim mentioned. He said that Wellesley's Zoning Bylaw introductory language is not part of the specific statute that can be enforced. He said that there are parts of the bylaw that mention public health that can be enforced, and it is something that the Board will consider. He said that it is one of many considerations that the Board hopes to address by strengthening the conditions of the permit that Ms. Jarvis will have to comply with.

Mr. Kim said that noise pollution is a public health issue –

Mr. Levy discussed concerned about the number of dogs discussed in the Animal Control Report.

Mr. Levy read Condition #1 for ZBA 2017-84-Amended. He said that the Board should add a condition that there shall be no drop off of dogs after 7 pm and prior to 7 am.

Mr. Levy read Condition #2 for ZBA 2017-84-Amended. He said that condition would include an queuing of vehicles and any idling of vehicles in violation of State or Town Bylaws.

Mr. Levy read Conditions #3 and #4.

Mr. Levy said that the Board will insert conditions that travel on Harris shall not exceed 10 miles per hour, there shall be no live parking, all dogs shall be leashed when in any public area, no excessive noise.

Mr. Seegel said that a condition will be that the Applicant shall notify all of her clients by regular or email that there is a speed limit, that they must keep their dog on a leash, and that they cannot park or idle on Harris Avenue.

Mr. Levy said that all conditions must be provided to all customers.

Mr. Levy said that the bylaw provides that there shall not be more than two employees.

Mr. Levy said that the permit shall expire in one year, with no renewal.

Mr. Levy moved, Mr. Seegel seconded the motion, and the Board voted unanimously to approve renewal of the special permit for one year, subject to the current conditions as well as the conditions discussed at the public hearing.

Mr. Levy said that if the neighbors notice any violations for the number of dogs, they should contact Michael Grant, Zoning Enforcement Officer. He said that the police should be notified about any violations regarding traffic, speed or idling.

ZBA 2021-40, YVONNE & MARK PYTLIK, 192 WASHINGTON STREET

Present on behalf of the petition was Peter Lewandowski, Architect, who said that the project was redesigned after the previous hearing and documents were submitted to the Board last week.

Mr. Lewandowski discussed Proposed Elevations drawing, A2.0. He said that the design was reduced from the original to a 12 foot wide dormer, they added more details on the front elevation with everything tucked under the existing roof line, and brought the overall height of the ridge to approximately 23.7 inches. He said that the area of the space is the same as far as the calculations. He said that lot coverage remains at 19.77 coverage. He said that they will remove the existing garage to make the side yard more conforming. He said that they will continue the side wall of the existing house, approximately 7 to 7.5 feet off of the property line. He said that they spoke with the Cohens, who still had questions that may not have been resolved. He said that they made an effort to minimize the space. He said that they are trying to use the area of flat roof as usable space.

Mr. Adams said that the possibility of using a dog house rather than a shed dormer was discussed at the previous hearing. Mr. Lewandowski said that the spaces would not work with a dog house dormer. He said that they lowered the roof line on the main house down to the existing ceiling. He said that tucking under the existing roof made it difficult.

Mr. Sheffield said that the former long shed dormer has been reduced approximately 75 percent. He said that on Plan A1.0 he said that in the space that is identified as living space, it was not clear if the knee wall was located correctly. Mr. Lewandowski said that the living space was lowered. He said that originally it was level on the second floor, so the knee walls were more shallow. He said that they lowered the space over the garage so that the knee walls got wider. He said that it will be the same roof line. Mr. Sheffield said that the head heights were reduced on the sides of the room, which will be apparent on the inside but not on the outside. He said that there will be Velux windows on the sloping part of the roof. He said that one of the major complaints of the neighbors was that the extended dormer almost went the full length of the second floor was inhibiting their longer range view from their property. He said that the ridgeline now recedes from view and will seem a lot lower than the portion that has the dormer. Mr. Lewandowski said that on the right elevation, the fascia board is lower than the existing flat roof fascia that is there now. –

Mr. Sheffield said that there was no exterior lighting on garage side shown on Plan A2.1. Mr. Lewandowski said that he did not know what the intention is for lighting there. Mr. Sheffield said that there should be no horizontal light spillage. Mr. Lewandowski said that there are down lights over the garage doors, there is a six foot fence at the property, so there would not be a lot of spillage. He said that there are also a lot of pine trees in that location. He said that they can use dark sky fixtures.

Adam Cohen, 190 Washington Street, said that the Board previously said that it has to consider whether the proposed change will disrupt the character of the neighborhood. He said that as the direct abutter who is most affected by this change, this will significantly disrupt or destroy their enjoyment. He said that when they bought their home 18 years ago they understood that the house next to them was less than 10 feet from the property line. He said that the neighbors are now trying to double the mass that the Cohens will see along their property line. He said that it is about how it affects their yard and their enjoyment and value of their property. He said that it makes it feel very congested on that side of their house. He said that there is ample space to build on the west side of the property. He said that the purpose of the project is for Ms. Pytlik's mother to move in. He said that after the hearing, he received 14 unsolicited, harassing, abusive and mendacious from Ms. Pytlik in the span of about 18 hours that upset his whole family. He said that repeatedly asked Ms. Pytlik to stop. He said that Ms. Pytlik insisted that it is her property and she can do what she wants. He said that she lives in New York and is a professor at Columbia, which does not jibe with moving her mother into the house. He said that they have lived there for 18 years and have never seen Ms. Pytlik until a few months ago. He said that the house has two mail boxes. He said that he believes that the is already being used for rental purposes and the ultimate purpose for this adjustment to the property is for some sort of monetary gain. He said that his main concern is how it will affect his property. He asked the Board to reject the application for the nonconforming property.

Mr. Adams said that he did not think whether or not the owners are doing the project for her mother or for their own use has any bearing on this. He said that Mr. Cohen's concern about whether or not the mother will move in is relevant to him. Mr. Cohen said that Ms. Pytlik made it relevant by raising it at the previous hearing. Mr. Becker said that there are enforcement processes to go through to cover that if they think that it is being used as a two family dwelling. Mr. Cohen said that he is aware of that.

Mr. Becker said that the Pytlisks have a right to do there. He said that the question is whether it takes existing nonconformities and intensify them and if it does, are the proposed changes more detrimental to the neighborhood than the existing nonconforming structure. Mr. Adams said that the Cohens are part of that neighborhood but the Zoning Bylaw does not guarantee a neighbor to have the air and light that they always have had. He said that neighbors have a right to do things with their property that the Cohens may prefer that they not do.

Mr. Cohen said this negatively affects his property and he has the right to object. Mr. Adams said that the Applicant heard the Cohen's concern at the previous housing and went to some length to redesign the house and reduce the usable space in that area of the house. He said that Mr. Cohen is fixated on what he can see out his window on that side of his house. Mr. Adams said that he did not see it as more detrimental to the neighborhood.

Mr. Cohen said that it is a nonconforming property that they are proposing to make much larger on his property line. He said that he is not fixated but this will negatively affect his property. He said that the view out of the window is one of the components. He said that Ms. Pytlik asked for money from them. Mr. Becker said that is something that the Board does not have control over. Mr. Cohen said that the Board needs to understand the tenor of the discussions.

Mr. Adams moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to approve a special permit for the revised design for a smaller dormer.

ZBA 2021-57, ROBERT & JEANNE CERULLE, 72 FAIRBANKS AVENUE

Present on behalf of the appellant was David Himmelberger, Esq. Mr. Himmelberger said that this is an appeal from a denial of an enforcement request for nonconforming air conditioners (ac) in a setback area that is not allowed. He said that three ac condensers are located between 11 and 20 feet in an el in the corner of the building that project onto his client's property. He said that Mr. Cerulle sought enforcement of the bylaw and the request was denied, citing chapter 40A, Section 7, which is generally known as the Safe Harbor provision in Zoning and provides that structures that are erected subject to a building permit but are in violation of Zoning cannot be the subject of an enforcement action after six years and structures that are built not subject to a building permit receive the same safe harbor after 10 years.

Mr. Himmelberger said that safe harbor does not apply to ac compressors because they are not structures or parts of structures. He said that the town had a bylaw for decades that prohibited structures in the setback. He said that in 2002, the town passed an amendment to the bylaw that specifically prohibited ac compressors in the setback. He said that the town would not have done that if ac compressors were considered to be structures or parts of structures. He said that he cited a Land Court case, which in construing a bylaw regarding location of ac condensers, that stated that ac units are not structures but rather property improvements and electrical devices providing service to the residence and are analogous to appliances.

Mr. Himmelberger said that as one reads Chapter 40A, Section 7, it is not broad enough to encompass ac compressors. He said that the Appellant is asking the Board to rule that there is no safe harbor for ac compressors.

Mr. Himmelberger said that there are three ac compressors from 2004. He said that their ratings are in the mid 70's for decibels, which is high for today's standards. He said that because they are located in an el where the building acts as a backstop to them, it acts as an amplifier to his client's property. He said that this has become more acute with working from home. He said that Ms. Cerulle has progressive hearing loss and it becomes quite difficult to hear with the compressors on. He said that his client hoped that the neighbors would move them to the rear of house when they sold the house.

Mr. Himmelberger said that the ac condensers do not qualify as a structure or parts of structures and subject to enforcement, regardless of safe harbor.

Mr. Seegel said that he was not sitting on the panel for the case but was asked to give his input after reading everything. He said that he did not even get to Chapter 40A, Section 7. He said that Mr. Cerulle lived there when the building permit was issued and made no objection at the time when everything was being put in. He said that it is clear that what Mr. Cerulle is trying to do 17 years later is to have an enforcement action. He said that case law is clear that the appeal cannot go forward on that basis. He said that in a decision of the Appeals Court, Gallivan vs ZBA of Wellesley, the law was explicitly discussed. He said that at the very least this would laches. He said that Mr. Cerulle had 17 years to bring an enforcement action but chose not to.

Mr. Himmelberger said that his client became aware of it five years ago and due to circumstances that were ongoing in the family with the ac compressors, they chose not to pursue it. He said that hearing loss issue has worsened. He said that Mr. Cerulle thought that he was being a good neighbor by holding off. He said that when the property went up for sale, he thought that it was an appropriate time to make the neighborly request that was rejected. He said that he then requested the enforcement action.

Mr. Himmelberger said that he did not see this situation as something that Chapter 40A, Section 7 controls. He said that there were extenuating circumstances on waiting to bring the action now. He said that none of the compressors get quieter with age. He said that there are three units in close proximity, which does not seem right. He said that there is no evidence of which he is aware that shows that the units were installed pursuant to a building permit as much as they were installed contemporaneous with the addition that was put on. He said that they were visible when they went in but that should not preclude the enforcement action from going forward.

Mr. Levy said that even if the units were installed without a building permit, they fall under the 10 year statute. Mr. Himmelberger said that they only fall under that if they are structures or parts of structures. Mr. Levy said that they are attached to the house and it is not so easy to move them. He questioned the altruistic motivation when the property went on the market. He said that he does not condone work done without permits but he is also aware that of the 17 year delay from when the condensers were installed to the present time. He said that 17 years is a long life for condensers and the likelihood of their use will diminish in the near future. He said that new compressors are more efficient.

Mr. Becker said that Town Counsel and Mr. Himmelberger stated that structure is not defined in the Zoning Bylaw. He said that it is defined on Page 41 and Page 81.

Mr. Levy read Chapter 40A, Section 7. He said that ac units can be replaced if the Board finds that they are structures for a special permit. Mr. Adams said that the Board could put conditions on the decision.

Mr. Himmelberger said that the work was done impermissibly because the town passed the bylaw in 2002 and the units were installed in 2004 to 2005.

Mr. Levy said that Mr. Cerulle sat on his rights for 17 years. He said that the Gallivan Case specifically discusses the dichotomy between a Section 7 appeal and a failure to appeal a building permit within 30 days of its issuance. Mr. Himmelberger said that there is no evidence of a building permit in this case.

Mr. Levy asked if anything that was submitted shows that the condensers violate the setback. Mr. Himmelberger said that Exhibit C is the certified plot plan that shows the construction of the addition with a 20.4 foot setback. He said that the compressors are located in the nook. He said that his client has run a tape measure to the units and they are less than 20 feet to the property line. He said that he provided the building permit and there is no mention of the compressors.

Mr. Levy asked if there has been any discussion among the parties for mitigating measures such as soundproofing. He said that the compressors will soon outlive their useful life and will need to be replaced with modern equipment that is much more sound efficient.

Mr. Becker said that the Board was told at a previous hearing for another case that the life expectancy of ac units is eight years. Mr. Levy said that the Board has also seen evidence that the decibel levels of newer equipment is not greater than other devices that are allowed in the setback area.

Mr. Adams said that as a former building inspector himself, he knows that permits for making alterations to a house do not always list the ac unit as an element of the building permit. He said that the units did get installed and there is no evidence to say that were not done at the same time as the construction. He said that it is reasonable to consider them as structures under the sunset provisions for taking action for something that has been built.

Mr. Himmelberger said that if they were structures, there would have been no need for the 2002 bylaw. He said that when construing acts and bylaws, you have to give the words their ordinary meaning and not find them to be surplus. He said that the town would never have needed to enact a specific bylaw prohibiting ac compressors from the setback if, in fact they were already deemed to be structures because there was already a prohibition against that. Mr. Adams said that laws are often enacted or revised to clarify the original intent, which this may be a good example of.

Mr. Himmelberger said that his client would be willing to continue this to next month to have further efforts at resolution with the abutter.

Mr. Levy discussed concerns about setting precedence.

Mr. Becker said that a discussion between the neighbors should take place sometime between tonight and the next hearing. He said that this case seems to be more about the law rather than the bylaw.

Mr. Grant said that Town Counsel was also not in agreement with Mr. Himmelberger's opinion. He said that not all of the permits list everything put into a house, such as type of heating or cooling systems. He said that it was never disputed in all of his conversations with the owners that the condensers were put in with the 2005 permit. He said that there was a plot plan that does not show the units located in the setback. He said that it may have been missed during an inspection but no complaint was filed in a timely manner. He said that based on the photographs that Mr. Himmelberger provided, it is clear that the units are located in the setback. He said that the 2010 sheet metal laws now require that the specific location of ac condensers be shown on a certified plot plan. He said that from 2003-2010, it was hit or miss. He said that the units were found to be in the setback when the inspector walked the property with the as-built, the property owner would be told to move them. He said that somehow this was missed.

Mr. Levy asked if there is any basis for a variance. Mr. Himmelberger said that he did not think so.

Dan Stempel, 72 Fairbanks Avenue, –said that all three condensers were installed in 2005 along with an addition. He said that they thought that they did everything by the book. He said that they had a licensed architect, general contractor and subcontractor. He said that the condensers are behind a pre-existing nonconforming garage and do not stick out. He said that they assumed that everything was okay. He said that the units were new and did not replace existing units. He said that the same units have been there for 17 years. He said that they have been friendly with the Cerulle’s and saw no reason why they could not speak to them about the issue. He said that the first that he heard of the issue was after they put the home on the market. He said that the town did inspections and issued permits and they thought everything was up to code. He said that there some discussion about alternatives to address noise. He said that, knowing that it would likely be difficult and expensive to move the condensers, he offered noise fencing to offer noise and visual relief. He said that moving the condensers to the rear will still be in the Cerulle’s line of sight. He said that fencing would be a better solution. He said that Mr. Cerulle declined that option and chose to pursue the appeal.

Mr. Levy asked if Mr. Stempel lost his buyer as a result of this appeal. Mr. Stempel said that has not happened yet but his understanding is that his buyers have been in communication with the Cerulles, which was concerning. He said that the buyers started delaying elements of the same process and the sale has not closed yet. Mr. Levy asked if the contract is contingent on the outcome of the appeal. Mr. Stempel said that there are some elements of that. Mr. Levy said that the Board does not want to delay things if it will affect the sale of the house. He said that it was suggested that the parties get together to try to work something out. Mr. Stempel said that he already tried to reconcile it.

Mr. Adams asked if the aggrieved party would be willing to contribute to the cost of sound attenuation devices.

The hearing temporarily adjourned at 9:38 and reconvened at 8 pm.

Mr. Himmelberger said that Mr. Stempel and Mr. Cerulle reached an agreement by which Mr. Stempel is going to contribute \$,1000 for sound attenuation and in exchange, Mr. Cerulle authorizes Mr. Himmelberger to seek leave to withdraw his appeal.

Mr. Levy moved, Mr. Adams seconded the motion, and the Board voted unanimously to allow the appeal to be withdrawn without prejudice.

ZBA 2021-52, JENNIFER HUGHES, 68 CURVE STREET

Present on behalf of the petition were Carter Williams, Architect, and Jennifer Hughes. Ms. Williams said that the request is for a special permit for a pre-existing nonconforming condition and on the other side of the property, a variance.

Ms. Williams said that the request for the special permit is for the west side of the house where the side yard setback is 19.1 feet. She said that the proposal is for a small addition that maintains the line, not worsening or increasing the nonconformity. She said that it will be a two-story addition that is smaller on the second story than on the first. She said that it is stepped back as it goes up to the second story.

Mr. Becker read the Planning Board recommendation.

Mr. Becker said that there will be no intensification of a nonconformity and there are no issues with TLAG.

Mr. Becker asked if any member of the public wished to speak to the special permit.

Ms. Williams discussed the variance request. She said that the existing one car garage is very small and awkward. She said that a masonry chimney comes down which makes it hard for the homeowner to park her car inside. She said that the proposal is to expand the garage, which is partly below grade. She said that they will expand it approximately 6.5 feet to the east, maintaining the same depth of 21 feet. She said that the driveway is poorly graded and is dangerous. She said that the property is located at the apex of the curve on Curve Street, so it is important to adequate off-street parking as a safety issue. She said that the plan is to expand the driveway to make it safer and allow a car to be pulled straight into the expanded garage. She said that the intention is to make the whole parking and walking experience safer and easier. She said that the Lindquists, who are neighbors on that side, wrote a letter of support. She said that there will be some landscaping and fencing along that side.

Mr. Levy asked about the basis for the variance. Ms. Williams said that it is an oddly shaped property. Mr. Levy said that the area of the lot where a variance is sought is regular. He said that the odd shaped part of lot does not affect the area where they seek to do the renovations. He discussed self-imposed hardship.

Mr. Adams asked about the topography at the rear part of the lot. Ms. Williams said that the whole property crests at the pinch point. She said that it rises steeply moving southward from Curve Street, crests and then the porch chop portion gently goes back down towards Howe Street. She said that it drops quite a bit at the back and there is ledge and retaining walls. She said that Howe Street is a good bit further down. Mr. Adams asked if it would be feasible to put a garage in the area at the back. Ms. Williams said that they could not put it there because of the setbacks. She said that area is not buildable. Mr. Adams said that it is unusual lot that has other constraints to it.

Mr. Becker asked about the lengths, location and heights of the retaining walls. He said that they appear to be within 10 feet of the property line and may need Zoning relief which is not part of this application. Ms. Williams said that they will seek to solve retaining wall issues through landscape design and changing the grade rather than a taller wall. Mr. Levy said that the Board will be granting no relief under the retaining wall bylaw.

Mr. Becker asked if any member of the public wished to speak to the variance request.

Mr. Adams asked about sharing the plans with the neighbors. Ms. Williams said that Ms. Hughes reviewed the plans with all three abutting neighbors. Mr. Adams said that a letter of strong support was submitted. Ms. Carter said that they designed the project in the spirit of keeping the neighborhood special and beautiful.

Mr. Becker read the Planning Board recommendation for the variance.

Mr. Adams moved, Mr. Levy seconded the motion, and the Board voted unanimously to approve a special permit and make a finding that the proposed structure will be no more detrimental to the neighborhood than the existing nonconformity structure.

Mr. Adams moved, Mr. Levy seconded the motion, and the Board voted unanimously to approve a special permit and make a finding that the proposed structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Adams moved, Mr. Levy seconded the motion, and the Board voted unanimously to approve variance and made findings pursuant to Section 24 of the Zoning Bylaw. Citing shape and topography as the hardship.

ZBA 2021-53, KERRY & EDWARD EAGAN, 175 WALNUT STREET

Present on behalf of the petition was David Himmelberger, Esq., who said that the request is for modification of a variance to permit a proposed addition. He said that when the additional was initially contemplated, the

Architect presumed that it would require a special permit, as the existing house has a 10.2 side yard setback. He said that it was later discovered that the property had a prior variance that was granted in 1950 to permit two houses on a single lot to be split into two lots, with one of the lots having only 8,153 square feet and the house at 175 Walnut Street having 14,000 square feet in a 10,000 square foot Single Residence District, with a side yard setback of 10.2 feet. He said that it was called a variance, although at the time the Board was empowered to grant exceptions to the bylaw.

Mr. Himmelberger said that the proposal is to add onto the building, continuing the nonconforming setback and bettering it to 10.4 feet. He said that the lot tapers toward the rear. He said that TLAG will be 4,216 square feet in a SR10 district. He said that lot coverage will be 13.1 percent or 1,844 square feet. He said that the peak height will remain the same although it increases to 27.8 feet from average finished grade where it extends over a deeper grade. He said that the proposed addition will be otherwise compliant. He said that the two air conditioning units will be outside of the setback area. He said that the neighbor to the right and the neighbor across at 183 Prospect Street wrote letters of support. He said that the property to the rear is the Town's aqueduct. He said that this will not be substantially more detrimental to the neighborhood. He said that there are no retaining walls greater than four feet the curb cut for the driveway at the lot line will be 20 feet.

Mr. Himmelberger said that because the request is for modification of a variance, if relief is granted the project will go to the Planning Board for Large House Review (LHR).

Mr. Levy confirmed that the side setback is what requires a variance. He said that there are no dimensions shown to the ac condensers. Mr. Himmelberger said that they are shown outside of the dotted setback line.

Mr. Becker said that the right side setback from Walnut Street is the issue before the Board. He said that it will be the largest TLAG in the neighborhood but the project will go thru LHR.

Mr. Adams asked if the intention to continue the existing retaining wall. He asked about the stone wall materials. Mr. Himmelberger said that Plan A0.01 shows fieldstone retaining wall to match existing and will meet the height requirement.

Mr. Becker asked if any member of the public wished to speak to the petition.

Mr. Levy discussed the variance standards in 1950. Mr. Becker variances granted under Section 9 were more like a special permit rather than a variance under today's standards.

Mr. Becker read the Planning Board recommendation.

Mr. Levy moved, Mr. Adams seconded the motion, and the Board voted unanimously to approve amendment of the variance that was granted on June 7, 1950, to permit the proposed renovation.

ZBA 2021-54, KHALIL AND SAMEENA PIRANI, 12 RICE STREET

Present at the public hearing were Khalil and Sameena Pirani, the Petitioner.

Mr. Pirani said that the request to extend in the back was approved in 2015 but was not done. He said that the new design improves the roof lines to make it more interesting on the sides. He said that it is a narrow nonconforming lot.

Mr. Adams said that by going back, they will increase the nonconformity. He asked if any effort was made to come up with a design that would not be worse than the existing nonconformity. Mr. Pirani said that they

tried to keep a straight line back. He said that they made the deck a little smaller than last time. Mr. Levy said that a special permit was granted, without conditions.

Mr. Levy asked about the ac condensers. He confirmed that the request was advertised for a variance for them.

Mr. Adams asked if the Petitioner spoke with the neighbors about the plans. Mr. Pirani said that he mentioned the plans to renew the special permit to the neighbors. He said that the neighbors did not express an interest to see the plans.

Mr. Becker asked if any member of the public wished to speak to the petition.

Mr. Becker said that there are three nonconformities on the left side for the existing house and two for the proposed addition. He said that there is a nonconformity on the right side for the existing house and the proposed addition and one that is only for the proposed addition. He said that the nonconformities are on the right side will be intensified and on the left side they will not be intensified.

Mr. Pirani said that if the neighbors on the left have concerns about the ac condensers, he can put an acoustic barrier around them.

The Board discussed the relief that was granted in 2015 and dimensional requirements in the Zoning Bylaw. David Himmelberger, Esq., said that the dimensions for a 10,000 square foot Single Residence District have typically been applied to the General Residence District because where the bylaw talks about the tables, it says that Table 1 is applicable to lots recorded or endorsed on or before January 24, 1985, which is more inclusive as opposed to lots in the 10,000 square foot and so on. He said that he believes that the Planning Board and the Building Inspector believe that the 10,000 square foot district requirements apply, in addition to the general lot coverage requirement which clearly applies.

Mr. Becker read the Planning Board recommendation.

The Board discussed granting relief as a special permit or as a variance.

Mr. Pirani said that it is a very wooded lot and this will not be very noticeable on the street.

Mr. Becker said that there are several narrow lots in town. Mr. Adams said that they could avoid the variance for condenser by putting in a narrow condenser. Mr. Pirani said that he can accommodate that.

Mr. Levy moved, Mr. Adams seconded the motion, and the Board voted unanimously to grant a special permit for the proposed addition. The Board said that no relief is granted for the ac condenser.

ZBA 2021-58, ST. ANDREW'S CHURCH OF WELLESLEY, 7 DENTON ROAD

Present of behalf of the petition was Steve Mahoney, who said that he is the Vestry for Property at St. Andrew's Church. He said that the request is for renewal of special permit at 7 Denton Road for a two family use.

Mr. Adams asked about the history of the property. Mr. Mahoney said that the house was built before 1900 and acquired by the Church in 1960. He said that the request to use it as a two-family was granted in 1984 and has been renewed since then. He said that one floor is for clergy and the other is for someone who is non-clergy who is not associated with the Church.

Mr. Becker said that for the 1984 approval, 40 to 50 people came to the hearing, principally to object to the proposed use. He said that there was no opposition to the first year renewal.

Mr. Adams said that this Board received a letter of opposition. He said that the person who sent the complaint did not explain how the use related to his concerns.

The Board discussed the Zoning Bylaw regarding the special permit for the use.

Mr. Becker asked if any member of the public wished to speak to the petition.

Mr. Becker read the Planning Board recommendation.

Mr. Adams moved, Mr. Becker seconded the motion, and the Board voted unanimously to approve renewal of the special permit, subject to the same conditions for a period of three years.

ZBA 2021-59, JOHN & EVELYN HELFRICH, 10 PARK AVENUE

Present of behalf of the petition was David Himmelberger, Esq., representing the record owner of 10 Park Avenue, seeking a special permit for new construction for a replacement home on a lot that is nonconforming due to lot size. Also present was David Silverstein, Copper Leaf Development. M

Mr. Himmelberger said that the lot has 18,313 square feet in a 20,000 square foot district. He said that the proposal is to raze the existing structure and build a fully conforming and dimensionally compliant new home that is 30.5 feet tall, with a TLAG of 5,636 square feet, which is below the threshold for the district, and lot coverage of 16.4 percent, or 2,999 square feet.

Mr. Levy asked about the 500 Foot Rule. Mr. Himmelberger said that the Field Resources Plan shows at front yard setback for 22 Park Avenue at 31.5 feet.

Mr. Becker said that the only nonconformity is the lot size.

Mr. Becker read the Planning Board recommendation.

Mr. Adams asked about the corrected plan. Mr. Himmelberger said that the plan was corrected to show a height of 30.5.

Mr. Becker asked if any member of the public wished to speak to the petition.

Ziyang Yu, 14 Park Avenue, said that he has known Mr. Silverstein for three years. He said that Mr. Silverstein has built a lot of beautiful homes on Park Avenue.

Mr. Yu said that the plan is to replace the existing home with one that is much larger and taller. He asked that consideration be given to maintaining privacy on both sides with fencing or something else. He said that he has young children. He asked that proper measures such as temporary construction fence be taken during construction and demolition process to ensure the safety of the surrounding families. He said that the distance between the two houses will be close. He asked that the ac condensers be located on the left side, opposite a three car garage on the neighbor's property. He said that locating the ac unit there will have less impact. Mr. Adams said that the ac condensers appear to be on the left side on the plans.

Mr. Adams said that safety during construction is something that the building inspector is charged with doing. He said that it is not unusual for the building inspector to require that a construction site be fence or

at least contained in a way that children could not get hurt. Mr. Becker said that there is a fence on top of a retaining wall on the left side of the property.

Mr. Yu asked that efforts be made during construction to minimize the impact on surrounding structures. He asked that heavy equipment be kept far away enough to prevent excessive vibration that could impact the foundations of surrounding houses. Mr. Adams said that the neighbors can request that the Developer document the condition of their houses in case there is any damage. Mr. Becker said that those issues should be directed to the building inspector.

Mr. Becker read the Planning Board recommendation.

Mr. Himmelberger said that the plan is to keep the existing trees between the new house and the neighbor at 14 Park Avenue. He said that they will add seven arbor vitae closer to the street at a 35 foot depth, as shown on the Planting Plan. He said that the plan is to install a board and batten fence from the back of the arbor vitae to the back of the lot. He submitted Planting Plan, L3.0.

Mr. Silverstein said that he is sensitive to the concerns about safety of the children and will put fencing up along the property line. Mr. Himmelberger said that Mr. Silverstein lives on Framar Road, which is approximately 100 yards down the street.

Mr. Adams moved, Mr. Levy seconded the motion, and the Board voted unanimously to approve a special permit and make a finding that the proposed structure will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

ZBA 2021-55, LORIANNE SAINSBURY- & WILKINS WONG, 4 MANSFIELD ROAD

Mr. Adams said that he had to recuse himself from this project because Mr. Kinsella was his contractor for a renovation at his home 20 years ago. He said that he could sit on this case impartially but felt that he should recuse himself.

Mr. Levy moved, Mr. Adams seconded the motion, and the Board voted unanimously to open the public hearing for the petition and continue it to the August 5, 2021 hearing.

ZBA 2021-56, EDWARD & MICHELLE JACOBS, 97 RUSSELL ROAD

Present on behalf of the petition were Michelle and Edward Jacobs, the Petitioner, Oscar Mertz and Jason Indelicato.

Mr. Becker said that there was nothing in the submittal packet about wetlands protection or how the runoff will be treated. He said that the property is located in a Water Supply Protection District and a Wetlands Protection area. Ms. Jacobs said that they went through the wetlands process last year. She said that in the discussion for the waiver to move the house to a new footprint that would result in the structure be located in resource land, the Wetlands Protection Committee (WPC) could not come to a decision that there was a hardship. She said that WPC asked them to inquire about Town water and sewer land that this property encroaches on to rebuild in the same location. She said that the request for the land was denied. She said that there is a 14 inch water main just outside of the encroachment that would be at risk for any construction there. She said that the WPC recommended that the petition go to the Zoning Board of Appeals first to have a hardship defined. She said that they have a full drainage plan that the Department of Public Works (DPW) has reviewed.

Ms. Jacobs discussed the two-fold variance request. She said that the request is to relocate the existing house outside of the current footprint. Mr. Becker said that there is nothing in the Zoning Bylaw that says that you

have to build on the existing footprint. Ms. Jacobs said that the proposed structure cannot meet the setback requirements due to the topography and size of the property. She said that WPC framed it that there has to be a hardship in order to get approval to build the house where the Jacobs are proposing. Mr. Becker said that the variance request is what will get them to the hardship. He said that the existing home has nonconforming setbacks and the proposed home will have nonconforming setbacks. He said that the Board has to determine whether that would be intensification of an existing nonconformity or creation of a new nonconformity.

Mr. Levy said that the request was for a variance. He said that the Board will not rely on any relief based on the existing structure. He said that the Board will look at this as if it was a vacant lot and determine whether the proposed structure can be built on a lot that is too narrow.

Mr. Becker said that the proposed construction will require a variance for setbacks for the house and the garage. Ms. Jacobs said that the setbacks will not be more nonconforming. Mr. Becker discussed the relevant standards for granting a variance. He said that the Board has to find that the need for the proposed setbacks are not a self-imposed hardship for siting the house on the lot. He said that it is clear that topography is an issue but it goes in a different direction than the setbacks. He said that, with respect to the garage, the bylaw says that you cannot site a building adjacent to town owned land except 10 feet in from the property lines. He said that the proposal is to be one foot from the property line and that foot is taken up by an overhang on the roof that goes to the property line. He said that there are issues that have to be resolved.

Mr. Adams said that the design of the garage is tasteful but he did not understand why there is a clerestory right at the property line. He questioned why they did not try to minimize the height impact of the garage right up at the street. Ms. Jacobs said that it was designed to be architecturally interesting. Mr. Adams said that there are ways to make it interested without being so tall. He said that it will block the vision of people going up and down the street and view of the pond. Ms. Jacobs said that there is no pathway to the pond from Russell Road.

Mr. Becker said that he could not recall of another property like this where the road terminates at the lot. He said that when the Petitioner's document talks about side yard setbacks at five and ten feet, it is not clear that is a side yard setback. He said that is different when considering what should be a 30 foot requirement for a front yard setback or 10 feet for a rear yard versus a 20 foot requirement for a side yard setback. Ms. Jacobs said that the purpose of reversing the setbacks is to improve the distance between the proposed home and the neighbor's home and to improve the flow and sight lines between the two properties.

Mr. Levy said that the hardship seems to be self-imposed. Mr. Adams said that it will be a new house that does not meet setback requirements. He said that there are similar cases where similar size houses are built. He said that the Board is not unaware of the difficulties of these sites. Mr. Becker said that the cases that he found for Russell Road were for special permits to replace houses in the same location. Ms. Jacobs said that their proposal is to reuse the current building envelope setbacks. Mr. Becker said that there needs to be justification for not meeting the Zoning requirements. He said that there was no documentation of TLAG calculations. Ms. Jacobs said that it will be 3,250 square feet.

Jason Indelicato said that it is a unique situation. He said that the plans were reviewed with the building inspector, the Zoning office and the Wetlands Protection Administrator. He said that they are willing to work with the boards to make this work. He asked if the Board could give them some guidance as to moving the project forward. Mr. Becker said that the Board is authorized to tell the Petitioner how the proposed construction fits in with the Zoning Bylaw and if it does not fit, it is up to the Petitioner to tell the Board why it does not fit. Mr. Indelicato said that the topography is complicated. He said that the design of the home is such that it fits with the topography, the surrounding neighborhood and Morses Pond. He said that the goal was not to create a huge house. He said that it will be well within the height and the lot coverage. He said that the relief that they are seeking is to be able to locate the house in the proposed location for reasons

including access to the pond and protection from the neighborhood. He said that the project has support from all of the neighbors. He said that the current location is complicated and it took a long time to design something that works. He said that they can redesign the garage but they feel that the proposed house has been designed and is in a location where they feel that they can build and complements the neighborhood.

Mr. Becker questioned why the Board should grant relief for a 5 foot setback. He said that Section 24 of the Zoning Bylaw lists the conditions under which the Zoning Board can grant relief under a variance. He said that the Petitioner needs to relate the requirements to the proposed construction.

Mr. Indelicato said that he could discuss why the house was sited at that location.

Mr. Mertz asked what would be considered the front yard setback and the frontage and how that would be best addressed, given that the property is located at the end of the street and it is a very steep lot. He said that meeting a front yard setback would be dramatic to place any type of building with the setback. He asked about siting the building appropriately, given the setbacks for a 10,000 square foot lot. He said that this lot is nonconforming, it is a very steep site and there are existing five and ten foot setbacks which the Board says that the Petitioner cannot assume stay with the property. He said that they assumed that they would be able to work with the five and the ten and reverse them for the benefit for everyone on both sides. Mr. Becker said that the Petitioner has to look at Section 24 of the Zoning Bylaw and tell the Board why it is a hardship, what caused it and why the Board should grant the relief under a variance. He said that the Petitioner needs to specify what relief they are seeking and how it relates to the what the Board is authorized to grant relief for under Section 24 of the Zoning Bylaw.

Mr. Jacobs asked if the size of the lot and the fact that the driveway area is the only level area where they can park would provide rationale for a variance, given the limited depth of the property. Mr. Becker said that the three criteria in the bylaw are shape of the lot, topography, and soil condition. He said that 7,500 square feet is not the smallest lot that relief has been requested for.

Mr. Indelicato requested that the hearing be continued to September 2, 2021.

Mr. Becker said that the Board will have to figure out how to deal with wetlands since the Board normally relies on the WPC's work rather than doing that work themselves. Mr. Indelicato said that all of the documentation has been prepared and will be submitted to the Board. Mr. Becker said, given the limited access to the site the limited area for construction related things such as laydown and staging areas, the Petitioner should think through those issues as well. Mr. Indelicato said that they will provide a Construction Management Plan.

Mr. Adams moved, Mr. Becker seconded the motion, and the Board voted unanimously to continue the petition to September 2, 2021.

As there was no further business to come before the Board, the hearing was adjourned at 11:41 pm.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary